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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/002,521

11/01/2001

Timothy Samuel Girton

760-35 CIP

6660

7590 01/27/2009  
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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/002,521	<b>Applicant(s)</b> GIRTON ET AL.	
	<b>Examiner</b> MARC A. PATTERSON	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,3,21,22,24 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,21,22,24 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. In view of the appeal brief filed on September 29, 2008, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

***Claim Rejections – 35 USC § 103(a)***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3 and 21 - 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houser et al (U.S. Patent No. 6,361,559 B1).

With regard to Claims 3 and 21, Houser et al teach a vascular graft (bypass graft; column 7, lines 3 – 7) comprising an extruded composite of materials that are selected from a group including silicone and PTFE (column 7, lines 3 – 7). It therefore would have been obvious for one of ordinary skill in the art to have provided for an extruded composite of silicone and PTFE, therefore an interpenetrating network of silicone and PTFE, as the group disclosed by Houser et al includes silicone and PTFE. Houser et al therefore disclose an interpenetrating polymer network having discrete domains of the silicone distributed throughout the PTFE that are extractable from the PTFE to create pores, as stated in paragraph 0035 of the specification, therefore permitting tissue ingrowth; Houser et al do not disclose a PTFE that is expanded or that has a node and fibril structure; a non - expanded PTFE having no node and fibril structure is therefore disclosed by Houser et al.

With regard to Claim 22, Houser et al fail to disclose a particle size of 5 to 100 microns. However, would therefore be obvious for one of ordinary skill to select particle size, through routine optimization, depending on the desired speed of mixing, as a composite is disclosed by Houser et al.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Houser et al (U.S. Patent No. 6,361,559 B1) in view of Chuter (U.S. Patent No. 6,293,969).

Houser et al disclose a PTFE extrudate comprising extractable polymeric material in a vascular graft as discussed above. Houser et al fail to disclose a radially distensible stent positioned axially about the extrudate.

Chuter teaches PTFE (PTFE membrane material; column 2, lines 49- 53) comprised in first and second stents (first and second stent graft components; column 2, lines 45 - 47) with one stent positioned about the other stent (the stent components are at different levels, one below the other; column 2, lines 28 - 29) for the purpose of obtaining a stent which is biologically inert (column 2, lines 49 - 53). One of ordinary skill in the art would therefore have recognized the advantage of providing for the stent of Chuter in Houser et al, which comprises PTFE, depending on the desired inertness of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a stent, therefore radially distensible, positioned axially about the tubular extrudate in Houser et al in order to obtain a stent which is biologically inert as taught by Chuter.

5. Claims 24 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freiburger et al (U.S. H1978 H).

With regard to Claims 24 and 27, Freiburger et al disclose an extrudate (column 9, lines 65 - 67) comprising an interpenetrating polymer network comprising PTFE and silicone (column 10, lines 30 - 34); Freiburger et al do not disclose a PTFE that is expanded or that has a node and fibril structure; a non - expanded PTFE having no node and fibril structure is therefore disclosed by Freiburger et al; because Freiburger et al disclose an interpenetrating polymer network, Freiburger et al disclose discrete domains of the silicone distributed throughout the PTFE that are extractable from the PTFE to create pores, as stated in paragraph 0035 of the specification, therefore permitting tissue ingrowth.

Art Unit: 1794

Freiburger et al fail to disclose a silicone that is solid particulate. However, Freiburger et al disclose a silicone, as discussed above. It would therefore be obvious for one of ordinary skill to select a solid particulate, or liquid silicone, as solid particulate and liquid are physical states of silicone.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/  
Primary Examiner, Art Unit 1794

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1794